1: Evans-Pritchard E-5 (1931, 1936) 1940
FJ22 Nuer FJ22

583 627 wife's people do not return all the cattle that have been paid. In such circumstances the debtor does not deny the debt but puts forward a counterbalancing claim on some account or says that he has no cattle to settle it. Often enough he says this even when he has got cattle. The claimant can only be sure of getting his due if he takes it by force from the debtor's kraal or from the herd in the grazing-grounds. If he is strong and has the backing of a powerful lineage he is not resisted, since he has right on his side. Such matters are easily settled within a village and among people who share a common dry season camp because every one realizes that some agreement must be reached by discussion and that it must accord with justice. But when the parties belong to different, and maybe hostile, villages, settlement is not so easy. The leopard-skin chief may be employed, in the manner described, to bring the parties together for discussion and some agreement may then be reached, but many such debts are never settled. They are remembered for years. Perhaps some day, maybe in the next generation, an opportunity will occur to steal the cattle.

682 627 If a wife dies in her first pregnancy or childbirth the husband is held responsible. There is no question of a feud arising, but the husband loses the bride-cattle he has paid, since these now become blood-cattle for the loss of his wife. The husband is only responsible if the death occurs during childbirth before expulsion of the afterbirth If there is any dispute about the mode of death or the number of cattle that are still owing it is settled by a mediator called *kuaa yiika* or *kuaa yiini*, 'the chief of the mats', an office which pertains to certain lineages. This man has no other office and is not an important person in virtue of his role of arbitrator in disputes of this kind. It is easy to obtain compensation, as the father-in-law has the bride-wealth in his possession. There is, moreover, a tie of affinity and neither party is likely to resort to violence.

671 Using these brief notes on some exemplifications of the tendencies in Nuer law we may now state what these tendencies are. We speak of 'law' here in the sense which seems most appropriate when writing of the Nuer, a moral obligation to settle disputes by conventional methods, and not in the sense of legal procedure or of legal institutions. We speak only of civil law, for there do not seem to be any actions considered injurious to the whole community and punished by it. The informants who said that witches and magicians were sometimes killed stated that it was always individuals or groups of kin who waylaid them and killed them in vengeance.

3/2 [See pp. 163-64, cat. 116 — Analyst]

2: Evans-Pritchard E-5 (1931, 1936) 1951
FJ22 Nuer FJ22

Nuer have told me, though they do not like to speak of it, for it touches on death, that there is what we would call a latent hostility between husband and wife, and indeed between man and woman. They say that when a man has begotten several children by his wife he wants her to die, and may even pray for this to happen, for he does not want to die before her and another man to cohabit with her, rule in his home, use his cattle, and perhaps ill treat his children and rob them of their birthright. Men say also that women in their hearts wish for their husbands' deaths. Whatever may be the significance that should be attached to these statements and to stories in which similar sentiments are expressed, family life among the Nuer is remarkably harmonious on the surface. I attribute this, in part at any rate, to the unchallenged authority of the husband in the home. A woman must obey her husband, and Nuer say that when he swears at her she must not answer back, and that he has the right to chastise her if she neglects her children or domestic duties. They told me that should he kill her (I have never heard of a case of the kind), whatever trouble his action may otherwise bring on him, he will not have to pay compensation, for she belongs to her husband's people and he only destroys what is his own, losing thereby both wife and the cattle he paid for her. No doubt there are cases of cruelty, especially where captive Dinka women are concerned, and I have been told of such, but I must record that during a year spent in intimate contact with Nuer in villages and camps I did not once see a man strike his wife or hear a serious quarrel between spouses, and I believe therefore that these are rare happenings.

Women know their duties and unless they are by nature lazy and slovenly, or wish to goad their husbands into divorcing them, they avoid domestic shortcomings. The husband, for his part, does not interfere with his wife's organization of her duties. So long as she performs them she may do so in her own way. For instance, when there is meat, a man hands it to his wife to prepare and leaves it to her discretion to decide how much of it to keep for herself and her children and how much to serve to the menfolk in the byre. Moreover, it is difficult for a man to ill-treat his wife, even should he wish to do so, for his conduct cannot be kept secret and his kinsmen would certainly intervene on her behalf. I have been told that no reputation in Nuerland is more shameful than that of a wife-beater, a man who prefers *kur man*, fighting with women, to

583 of a daughter for a wife. Payment of bridewealth
431 is a particular, and very striking, example of the principle of equivalence. A parallel example is the payment of cattle in compensation for homicide,[1] which among the Nuer is 40 head of cattle,
• 682 the same number as is paid for a bride. These
431 bloodwealth cattle are divided among the kinsmen of the dead man on the same plan of distribution
583 as that obtaining in the distribution of bridewealth, though about half are reserved for marrying a wife to the name of the dead man to bear him a son. Just as in bridewealth the principle is the replacement of a daughter by a wife, of a woman by a woman, so in bloodwealth the principle is the replacement of a son by a wife who will bear a son in his place, of a man by a man. It is worthy of note that the rate of bloodwealth has fallen in recent times to about the same level as the rate of bridewealth.[2] Nuer are aware of the equivalence of bridewealth and bloodwealth, for I have heard them complain that the government was attempting to fix bloodwealth without fixing bridewealth at the same rate, whereas what the one is the other should be.

583 To see the Nuer custom of bridewealth in its
431 structural perspective we must therefore think in terms of lineages. Children are attached by payment of bridewealth to the lineage of their father,
611 the attachment of the sons being of chief importance, though daughters may also be structurally significant in the lineage system. Children born in the union of marriage are "children of the cattle" and therefore of the man in whose name they were paid and they become joints in his branch of descent. The man in whose name the cattle were paid is always their *pater*, the sociological or lineage father, of the children, whether he is their *genitor* or not. If he dies, or is already dead before his marriage, the widow should be taken by one of her husbands and the fathers of his sons, that is to say by one of his brothers (or sons). But even

[1] This point is very clearly made by Prof. A. R. Radcliffe-Brown in Man, 1929 (96).

[2] Approximately 10 beasts are divided among the extra-family kinsmen and the rest, including the beasts due to the family of the dead man, are with contributions of cattle from his paternal and maternal kinsmen used to marry him a wife.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

682 577 There is, however, very little expression of an unfavourable reaction to the taking of life in the abstract, and homicide is not considered a crime against society. On the other hand what we should call 'cold-blooded murder', which is extremely rare, offends Nuer ideas of morality because the victim has had no chance to defend himself. It is the Nuer code of honour which has been contravened. People are profoundly shocked in these circumstances, a feeling which extends well beyond those who by reason of their relationship to the deceased are expected to take a vindictive attitude towards the killer and his kinsmen.

682 628 Homicide and blood-feuds arising out of homicide must be considered in relation to the social context. Such feuds are characteristic of the relations prevailing between the political divisions of a tribe. Specifically it is the tie of kinship which demands common action in vengeance against the killer of a kinsman, but the obligation often extends beyond the immediate lineage of the slain to much larger communities, tertiary or even larger tribal groups. Thus the spread of a state of feud follows generally, but not always exactly, the lines of social cleavage, and gives emphasis to the segmentation of the tribe. Generally speaking, a feud between two closely related groups will be settled without great difficulty because common habitation and common economic pursuits, strengthened by the tradition of blood relationship, demand peaceful composition as a matter of expediency. The sustained feud is usually one which has spread to larger units of society and becomes a permanent expression of opposition between them. Hostilities are not continuous, but even comparatively trivial provocation may be sufficient to start further fighting.

[624] In the past there was no conception of individual punishment inflicted on the person of the killer. There was no organized authority to inflict it. We have seen that the Leopard-Skin Chief, who had certain very definite functions to perform in connexion with homicide, had no political power but was essentially an arbitrator called in by hostile groups when a settlement of their differences was desirable. All wrongs were civil or private wrongs as between individuals or groups of individuals and, except in rare cases where collective action was taken against certain anti-social persons, witches and the like, there was no public law. The settlement of a feud arising from homicide, whether the act was committed by stealth, in fair fight, or by accident, required only the restoration of equilibrium between the groups involved. Settlement was in no sense an individual affair. It was not necessary to take revenge on the person of the killer himself; any one of his kinsmen would do instead.

If there was any sense of retributive justice, it was held by an isolated group of persons, the group to which the deceased belonged as opposed to the group of which the killer was a member. The action which

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

followed, whether it was revenge by the former or offers of compensation by the latter, was intended to satisfy the people who had suffered the injury. To kill a person of the other group restored the balance by reducing their numbers proportionately, but it was a negative way of dealing with a situation which required more positive action if a permanent feud was to be avoided. The principle of a life for a life rarely led to permanent peace even if honour was satisfied for the moment. The likelihood of positive settlement by payment of compensation and the performance of the necessary ritual depended largely on the degree of social integration and interdependence of the groups involved. Both were usually segments of an even larger group. Political and historical factors also played their part. Two tertiary tribal segments, for example, previously hostile might have to settle their differences because of the threat of violence from another and less closely related segment of the tribe.

These observations apply to the past, for homicide is now a criminal offence and strong action is taken to prevent the continuation of a feud. The crime is punished, but the feud is settled on traditional lines even though composition is compulsory. The payment of compensation in cattle is still made as a positive and effective way of restoring the balance and allowing social and economic contacts to continue. It involves the fundamental principle that a deceased person must be 'married a wife' so that her children, begotten by some kinsman on his behalf,[1] will bear his name, belong to his branch of the lineage, and may concern themselves with his interests in posterity. *Thung*, the indemnity for homicide, is primarily intended for this purpose. For this reason compensation should theoretically be in proportion to current rates of bridewealth, although, as we shall see later, the proportion is not exact as there are other claims to be met. Part of the cattle at any rate will be used to marry a 'ghost-wife' to the deceased, and although the physical father will be some other member of his lineage, the children will legally belong to his line. The group as a whole also loses in the deceased an economic asset both in ensuring the subsistence of his immediate family and in the collective economic interests of his associates. Therefore other close kinsmen must receive some share of the compensation to meet this loss, to satisfy their indignation and their desire for revenge, and because, were the position reversed, they might be called upon to subscribe towards the payment of compensation to some other group.

Theoretically the question of intention does not enter into the assessment of compensation because the principal object of the payment is to restore the balance which has been disturbed, but Nuer do in fact take it into consideration. It has already been mentioned that in all Nuer disputes scales of compensation are treated more as a basis upon

[1] For this institution—'ghost-marriage'—see Chapter III, pp. 74 et seq.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

which a compromise can be reached than an exact rule, and in the case of unintentional killing the indignation of the dead man's kin will be less than in cases of intentional homicide and a compromise more likely. Nowadays it is accepted that accidental killing demands only half the compensation required for intentional killing.

I must stress once more that these observations apply largely to the past. Homicide is now a criminal offence, and is invariably punished. Moreover, the Government insists on the prompt and peaceful composition of feuds arising out of homicide. The method of compensation, however, is no different from what it always was, and is usually assessed in a separate transaction after the trial for homicide is over. It is therefore necessary to describe in some detail the traditional procedures, ceremonies, and ritual involved before turning to modern procedure in the courts, where homicide is treated as a crime.

Definition of Terms

Before turning to the processes by which settlement of a feud is reached, it is necessary to define some of the Nuer terms which will be used. The verb 'to kill' in Nuer is *nak*, and the expression '*ce ran nak*', 'he has killed a man', is used generally for all forms of killing. Nuer further distinguish between killing which occurs in fair fight, whether in battle or single combat (all covered by the term *nak*), and killing by stealth or ambush, which is called *biem*. To them the latter form of killing is particularly reprehensible, although the circumstances are mitigated if it is done in revenge for a previous killing. The word *kur* is used to describe fighting in raids and battles, as opposed to the word *duac*, which is used exclusively to describe single combat or duels. The word *ter* means literally 'a state of feud'.

The two parties concerned in a feud are referred to as *ji ran*, which means 'the people of the man' (i.e. the deceased). These are the people who will seek vengeance on the *ji thunge*, 'the people of the compensation', who are the kinsmen of the killer and will be called upon to pay *thung* or compensation. The killer is usually referred to in the singular as *gwan thunge*, and in cases of homicide where more than one is responsible, the man to strike the first blow against the deceased is called the *ran me koic e-je*, and the second, the *ran me gam e-je*, a distinction which is important in assessing the liability to pay compensation. These expressions are used extensively in describing the processes of settlement, the circumstances of the incident, and the state of opposition between the two parties. The emotional attitude of the *ji ran* is characterized by intense indignation and a reluctance to accept compensation. Custom demands that they express in a conventional manner a sentiment of vindictiveness. Convention also demands that the *ji thunge*, the killer's kin, shall approach the *ji ran*

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

in a spirit of conciliation coloured by a genuine fear that vengeance may be exacted. These sentiments are always to the fore if settlement is sincerely desired.

Compensation in Nuer is called *thung*. *Thung* is usually qualified according to the circumstances of the killing, and the number of cattle demanded is graded accordingly. These qualifications are described more fully later, but briefly they are *thung ran*, which is full compensation in cattle for the death of a man killed in a fight whatever the weapon used, and *thung nyindiet*, which means compensation demanded for a man who dies as a result of an injury inflicted a considerable time before. There is another and less usual term (restricted, I think, to Lou and Gaawar Nuer), *thung loic*, which refers to the compensation demanded when the killer has not confessed to his crime until long after the death of his victim. *Thung gwacka* refers to unintentional or accidental killing; *thung yiika* to compensation demanded for a woman who dies in childbirth when the father of the child is not her legal husband.

The special Nuer functionary who is called upon to act as arbitrator in the settlement of a blood-feud is, as we have seen, the *kuaar muon* or 'Land Chief'. His badge of office is the Leopard-Skin (*kwac*), and for this reason he is more usually referred to as *kuaar kwac*, a term which is universally translated as 'Leopard-Skin Chief' and is nowadays used extensively both in works on the Nuer and in Government documents. His powers, however, are derived from his association with the land, and extend to mankind because it is upon the products of the land that mankind exists.

In the settlement of feuds, these 'Chiefs' are called in to remove spiritual difficulties by ritual performances and to act as intermediaries between the warring parties. The Leopard-Skin Chief, by reason of his special association with the land, can curse people, and traditionally he may use these powers to intervene. He can, for instance, interpose himself between the contestants in an actual fight and draw a line on the earth between them which theoretically no man would dare to pass. This action, however, is merely a symbolic expression of general opinion which condemns the continuation of a feud, and if both parties were really determined to come to blows, it is unlikely that it would be sufficient to deter them, although hostilities might be postponed until a time when the Leopard-Skin Chief was not on the scene. I know of only one recent instance when this duty was performed. A few of the more hot-headed warriors did cross the line and were condemned by public opinion afterwards, principally because by doing so they showed an excessive determination to join battle with the other party in a situation where the majority wanted peaceful settlement. In fact, the final result of the Leopard-Skin Chief's action was to provoke a much more serious conflict than would

8:Howell F, G-5 (1942-1944)1954
FJ22 Nuer FJ22

628 624 192

ruath riem and *yang kwac:* 'the bull-calf of the blood' and 'the cow of the Leopard-Skin'. These cattle are chosen from among the indemnity by the Leopard-Skin Chief and retained by him as fees, though the *ruath riem* is usually given to his personal assistant.

ghok pale loic: 'the cattle of the easing of the heart'. These consist of the *yang tuoke*, 'the cow of the cooking-pot' (*tok*), and a cow-calf referred to as *yang cak*, 'the cow of the milk', which are given to the dead man's mother as a token of her services in cooking for him and suckling him. The terms also bring out incidentally the idea that the ban on eating and drinking together has now been removed.

yang tul coka: 'the cow of the broken bone'. This is usually a bull or a barren cow sacrificed at either the *cuil* or *math* ceremony, divided, and partaken of by the *ji ran* and *ji thunge* together. This sacrifice is held to remove all fear of spiritual contamination in the future.

Rates of Compensation

682 Traditionally among most Nuer tribes, the number of cattle demanded as compensation for homicide was 40. A few tribes state that 50 were demanded for death caused by an injury from a fighting-spear (*mut*) and 40 for death caused by a wound from a fish-spear (*bith*) or a stick (*ked*) or by some other means. The use of a fighting-spear implies full intent and possibly a degree of premeditation since a fighting-spear has no other use. Moreover, to the Nuer, the probable consequence of a thrust with a spear is death, whereas use of the stick usually results in an injury which is not fatal. I do not know why a fish-spear is considered in the same category as a stick. It is, of course, essentially an economic tool rather than a weapon, but fish-spears are normally carried and used in war. It must be assumed that the use of a fighting-spear was considered a greater wrong and that a higher rate of compensation was demanded simply because the reaction of indignation was more intense. The rates of compensation were at one time reduced in some Nuer Districts to 20 head of cattle instead of 40 or 50, and there is now no distinction made according to the weapon used. As we shall see later, the indemnity is now standardized at 50 head of cattle, of which 10 go to the Government as a fine.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

682

Persons who are normally concerned in the Collection and Receipt of Compensation

We have seen that compensation payments for homicide are linked to bridewealth payments because the ultimate purpose is to provide the dead man with a wife so that children may be raised to his name. In the collection of the compensation cattle it will probably be those persons who normally contribute to bridewealth who will provide assistance. In marriage, when assembling all the cattle for bridewealth, a man will have a number of recognized claims both by inheritance and on the marriages of female relatives. He may take several years to assemble them even if a part of the bridewealth comes to him not in fulfilment of definite rights but from the spontaneous generosity of his kinsmen. Compensation for homicide, however, will have to be collected without delay, and other than the general obligation of all kinsmen, including as in marriage maternal kinsmen, there is no definite pattern. Moreover it seems that the obligation to assist a killer in the payment of *thung* is cast wider and includes kinsmen who would not normally assist him to marry. By this is meant kinsmen of collateral lineages who have no title to a portion of the bridewealth of the killer's female relatives, but sometimes receive small gifts as a token of their relationship to the bride.[1]

The Distribution of Bloodwealth

The distribution among the *ji ran*, the people of the dead man, is also in many respects similar to the distribution of bridewealth among the relatives of a bride for, apart from those cattle set aside for sacrifice and those paid as fees to the Leopard-Skin Chief, certain categories of kinsmen of the dead man will demand a share. The remainder will go to the man whose duty it is to marry a wife to the deceased. There is in fact a conventional pattern of distribution which is still followed in Western Nuer District.

Leik Nuer (*total compensation* = 40 *head of cattle*)

Initial Payments:

ruath riem and *yang kwac*: To Leopard-Skin Chief and assistants.
ruath muon: To the man who buried the deceased.
yang jyup: To *gwan buthni* of the dead man's kin.
thak or *ruath kethe* and *tut ghok*: Sacrificed.

Total: 6 head of cattle.

[1] I.e. beyond the limits of the *kethar*: the reader will understand these statements more clearly after reading Chapter III, Section 5, 'Distribution of Bridewealth'.

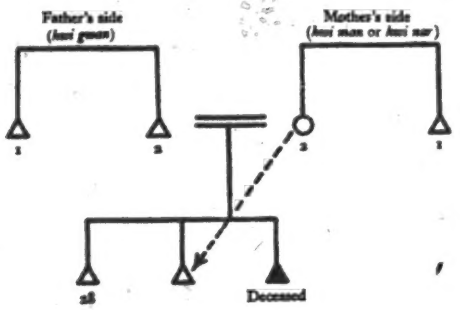
8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

682 *To the Deceased's Kinsmen:*

kwi gwan (father's side): *gwan* (father), a cow and cow-calf.
gwanlen (paternal uncle), a cow-calf.

kwi man (or *nar*) (mother's side): *man* (mother), a cow and cow-calf (as with bridewealth these go to her own sons).
nar (maternal uncle), a cow-calf.
Total: 6 head of cattle.

To the dead man's heir (usually his son or brother): The remainder to marry him a wife.
Total: 28 head of cattle.



Thus a small portion at least will go to the deceased's paternal and maternal kin, though those set aside in the name of the mother (*man*) will be inherited by her sons and will remain with the paternal lineage.

The Bul Nuer give a more elaborate system of distribution:

Bul Nuer (*total compensation* = 40 *head of cattle*)

Initial Payments:

As among the Leik (above) . . . . . Total: 6 head of cattle.

To the Deceased's Kinsmen:

kwi gwan (father's side): *gwan* (father), a cow and cow-calf.
gwanlen mande (paternal uncle: father's uterine brother), a cow.
gwanlen gwande (paternal uncle: father's brother by different mother), a cow-calf.
wac (paternal aunt), a cow-calf.

kwi man (or *nar*) (mother's side): *man* (mother), a cow and a cow-calf.
nar mande (maternal uncle: mother's uterine brother), a cow.
nar gwande (maternal uncle: mother's brother by different mother), a cow-calf.
manlen (maternal aunt), a cow-calf.
Total: 10 head of cattle.

To the deceased's heir: The remainder to marry him a wife.
Total: 24 head of cattle.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

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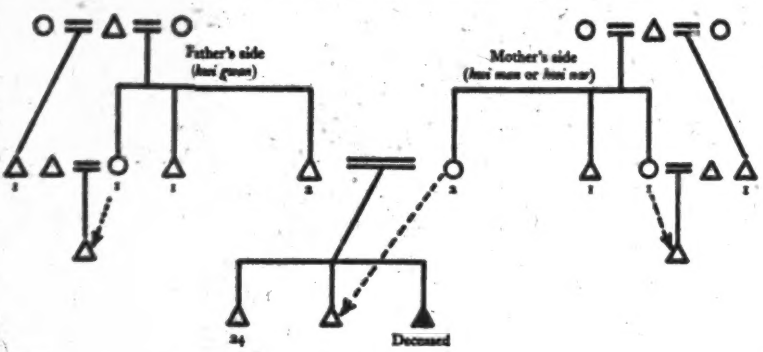
It will be noted that in all four lineages are involved, those of the father and mother of the dead man and those of his paternal and maternal aunts' husbands, since cattle given to them will be taken by their sons.



These examples are from Western Nuer where compensation for homicide has always been maintained at 40 head of cattle.[1] Among the Zeraf Nuer, after compensation had been reduced to 20 head, this distribution was not followed. Apart from initial payments, all the remainder went to the dead man's heir to marry him a wife. Since only 14 were left, it was usual to wait until the cattle had increased to the number required for normal bridewealth (not less than 18 to 20). Now that compensation has been increased once more to 40 head of cattle, the Zeraf tribes may well return to the old system of distribution.

Degree of Responsibility where Homicide is Committed Jointly

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In assessing the payment of compensation for a man killed by more than one assailant, Nuer do not take into consideration the severity of the wounds inflicted on his body, nor do they attempt to attach the cause of death to any particular wound. Once the fact of homicide is established, all persons involved are considered responsible, but it is the man who strikes the first blow, the *ran me koic e-je*, who is considered to have a much greater degree of responsibility than those who follow him. This applies however superficial the wound he inflicts on the body of the deceased. Most cases of this sort occur in battle, and usually those who fight side by side are kinsmen. The *ran me koic e-je* is therefore in many cases closely related to those who assisted him in the act of homicide, including the *ran me gam e-je* ('second spearer'). The collection of cattle for compensation is not therefore an unusually complicated matter, and is subject to agreement within the

[1] It is worth noting that some Western Nuer tribes say that the Leopard-Skin Chief is entitled to 4 head of cattle in all for his services: two bulls, a cow and a cow-calf. Aak Nuer say that these beasts should be given over and above the total of 40, although this is not a normal Nuer custom (as it is among some Dinka tribes).

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

682 kinship group. In some cases, however, the *ran me koic e-je* is not closely related to those who acted with him, and the collection of compensation becomes more complicated. It seems that, according to usual custom, the kinsmen of the *ran me koic e-je* are expected to pay the bulk of the compensation, although there are no definite rules on this subject. Some Nuer suggest that the 'first spearer' should pay all the compensation.

These rules have caused some confusion in the courts and the matter was standardized in 1945 at a meeting of the Nuer Council. It was then laid down that the *ran me koic e-je* should pay three-quarters of the compensation and the *ran me gam e-je* one quarter, and, if there were more than one *ran me gam e-je*, this quarter should be divided equally between them.

3. FORMS OF HOMICIDE AND COMPENSATION RECOGNIZED IN NUER LAW

682 The various forms of *thung* or bloodwealth recognized in Nuer Law and graded according to the seriousness of the wrong perpetrated against the dead man's kin have already been defined. It is now necessary to examine these in greater detail.

Thung ran

Thung ran, which is the general term used to describe compensation for homicide, is also used more specifically in circumstances in which a man has been killed intentionally. In the past this was subject, as we have seen, to certain qualifications. The rate of compensation depended on the weapon used, a distinction which perhaps reflected the degree of intent with which the act was carried out.

Thung loic ran

A blood-feud means that a spiritual barrier is raised between the two groups concerned, and that a breach of certain observances and taboos current between them while a state of feud exists leads to contamination which is physically manifested in disease (*nueer*). It is therefore incumbent upon a man to confess when he has killed another. Failure to do so would be a serious breach of moral duty. Moreover, he must do so in order that both groups may not involuntarily contaminate themselves and so that they may scrupulously observe the rules of behaviour necessary in these circumstances. In the event of a man subsequently confessing to homicide or the fact of his guilt being established later, the *ji ran* demand a higher scale in compensation referred to as *thung loic ran*. Nuer feelings are outraged by behaviour of this sort,

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

and it takes more to appease the feelings of the *ji ran*: indignation runs high because of the risks which are involved. Moreover they will naturally attribute certain deaths and illness in their family, which have occurred between the killing and the confession, to this cause.

The concept of *loic ran* remains in the category of private law. It is merely that extra compensation is required to restore a balance which has been more acutely disturbed, and to make good the ritual danger which has been added to the original wrong. It should be noted that the concept is extremely vague and is not known to all tribes. It is problematical whether *thung loic ran* was ever paid at all.

Thung nyindiet

The word *nyindiet* is not easy to translate, and I am indebted to Mr. Buth Diu, lately Nuer representative in the Sudan Legislative Assembly, for the following remarks:

> This is a most difficult word, which the Nuer themselves cannot explain. It is not really *nyindiet*, though the majority pronounce it that way, but *nin diet*. The first part of the word *nin* therefore could mean 'days', 'previous', 'old', or 'sleep'. In fact the expression *nin diet* is not only used in the context you have described, but of something which happened in the past implying a previous quarrel. Thus *teke nin diet ham dien ne walke* means 'there was a grudge between them in the old days'. The second part of the expression *diet* is not easily understandable. *Dit* has three meanings: 'bird', 'song', 'deed'. It is presumably the latter meaning which applies here, and the expression *nin diet* then means simply 'deed of the past'.

Thung nyindiet is demanded when a man dies as a result of an old wound. If a man dies a year or so after a fight in which he has sustained a wound full compensation is demanded. This is regarded as a normal killing and not *nyindiet*. If, however, he should die after a period of years, *thung nyindiet* only is called for. The period of time which must pass before *thung ran* changes to *thung nyindiet* is not clearly stated and is often in dispute. Moreover compensation may be sought for a man who dies so long after the infliction of the wound that to attribute death to it is absurd. Cases are continually arising in which men who die at the ripe old age of seventy or more are considered to have been killed by someone who struck them perhaps forty years previously.

As will be seen later, *thung nyindiet* has now been universally abolished, but it is worth noting that disputes arising over *nyindiet* are themselves probably the creation of the Government. The mere fact that *nyindiet* was previously recognized in the courts, and that Government action was taken when judgements were not executed, may account for the fact that what was formerly a very tentative concept, and in all probability never paid, has become a legal reality.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Thung gwacka

682 Compensation for accidental killing is usually paid on a reduced scale. Theoretically this should not be so, for, in the general balance of opposed groups, a life is a life, whatever the circumstances of death. Yet it is natural that when the act is unintentional, the feelings of those who would normally demand redress will not be so intensely inflamed, and they will be prepared to accept less. Here again the relationship of the parties is relevant, and the Nuer make a clear distinction in the terminology of their law. They speak of *gwac mara*, the accidental killing of a kinsman, as a minor wrong which will demand only tokens and ritual expiation. *Gwac gwoka*, the accidental killing of a person who is not related to the killer, is different, and an indemnity in cattle will be demanded, though usually on a much reduced scale. The dividing line between *gwac mara* and *gwac gwoka* is obviously difficult to determine, especially as the fiction of kinship is carried right through the tribal structure as an integrating principle and an explanation of political association. Nowadays the distinction is not valid, though it is doubtful whether compensation would be demanded for the accidental death of a brother or even a father's brother's son, but it is recognized that the full indemnity for homicide need not be paid. Usually half the standard indemnity is considered correct, but circumstances are important, and a Nuer court, though its members would be quite unable to express this as a general principle of law, takes into consideration what we should call negligence and the degree of criminal responsibility. There are certain extreme cases where the principal is held to be liable in theory, even though no compensation is necessary. For example, if a man who is thatching another's house falls and is killed or seriously injured, the owner must pay *thung diit*,[1] a purely symbolic payment in bundles of grass and ropes accompanied by appropriate ritual.

Thung yiika

682 684 According to Nuer Law, if a man seduces an unmarried girl and as a result she dies in childbirth, he is held responsible for her death. Her relatives will demand compensation known as *thung yiika*. This concept follows the general principle governing homicide, that the kinsmen, or in the case of a married woman, her husband, are entitled to compensation for the wrong. They should already have demanded compensation for seduction or adultery, which is known as *ruok*,[2] and for this reason it seems probable that the act is considered to be homicide, and not merely a breach of behaviour regarding women. The use of the word *thung* rather than *ruok* indicates that this is so. *Thung yiika* is, however, described in more detail under the heading of violation

[1] *Diit*, here meaning 'thatcher'. [2] See under Adultery, pp. 155 et seq.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

of rights in women, a subject which is discussed in a later chapter.[1] *Thung yiika* has now been abolished officially and is not recognized by the courts, but even before that, in most parts of Nuerland, as a custom it seems to have been dying out (except perhaps in Western Nuer) and it is probable that it was rarely paid.

Biem

The distinction between killing a person in fair fight and killing a person by stealth or ambush has already been mentioned, and we noted that the latter arouses in the Nuer a reaction of moral indignation, not because a life has been taken, but because it is an offence against Nuer standards of chivalry. It is therefore somewhat surprising that a higher rate of compensation is not required to appease the more intense feelings of outrage displayed by the dead man's kin. The reaction of horror or displeasure against an act of what we should call 'cold-blooded murder' is almost universal, and one might expect that the sentiment would be expressed in the scales of compensation traditional in Nuerland. There is, however, no suggestion of this in Nuer law, though a feud arising from such circumstances might well be harder to settle than one arising from straightforward homicide in battle or single combat. I think that the explanation lies in the fact that the circumstances rarely, if ever, arise except in the form of an ambush against a particular individual in pursuance of a feud.[2] If carried out as an act of vengeance the circumstances are considered to be mitigated. The literal meaning of the word *biem* is, in fact, 'to kill by ambush'.

4. THE STATUS OF PERSONS IN CONNEXION WITH HOMICIDE

Persons for whom Compensation was paid at Reduced Rates

In the past there was also a recognized distinction in the rates of compensation for the taking of human life according to the status of the person killed. There were certain categories of persons for whom compensation was paid on a much lower scale.

[1] See Chapter IV, p. 155.

[2] 'Fair fight' is a Nuer maxim. In the years 1943–4 there was a sudden and unusual incidence of cold-blooded murder among the Lak Nuer. In nearly all cases there was no actual motive, and the offenders gave as an explanation that they were directed by certain spirits (*kuth*) in their actions. Nearly all the accused, both in preliminary police investigations, enquiries, and during trial, displayed characteristics of mental instability, but not sufficient to disable them from conducting their defence. In most cases they revealed a curious persecution mania focussed on the person of their victim, though evidence that no persecution existed in fact was overwhelming. It is interesting to note that these murders, with one exception, were restricted to the Kwachor primary segment of the Lak Nuer, and all took place within a comparatively short space of time. Public opinion in Lak country was genuinely shocked and other tribes expressed strong disapproval. The Lak had an unsavoury reputation for some time to come.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Dinka in the Category of Slaves

Nuer distinguished between what they called *jaang cieng* and *jaang dhor*. *Jaang dhor* (literally, 'outside Dinka') were Dinka who had no connexion with Nuer and did not live among them. Scales of compensation, which varied according to the tribe, probably depended on their past relations with Dinka with whom their boundaries marched. A scale of compensation was recognized, although this does not mean that compensation was often paid. *Jaang cieng* (literally, 'home Dinka') meant those Dinka who had taken up residence with Nuer, associating themselves with some Nuer lineage and ultimately identifying themselves with it. Dinka recently arrived, and living thus in Nuerland, received compensation at a much lower rate—the scale varying from tribe to tribe. Dinka born in Nuer country and adopted, i.e. in the second generation, were usually treated as pure Nuer. In this connexion it must be remembered that adopted Dinka did not necessarily suffer social or political disabilities and often attained positions of great prominence among the Nuer. Deng Likea, a Dinka of Ngok extraction, became the acknowledged leader of Bar Gaawar through his spiritual powers, and his descendants are still the most important people there; Nuar Mer, an adopted son of Mer Teng Kerfeil, whose real name was Nuar Bul and who was of Dinka extraction, attached himself to the powerful Teng Kerfeil section of Radh Gaawar and gained great power through his treacherous alliance with Arab slave raiders. There are other notable examples. Dinka captured in war were not slaves in the usual sense of the word and were soon assimilated into Nuer society; their descendants, after a generation or two, would trace a fictitious descent relationship to a common ancestor through the lineage of the man who adopted them.

Witches, Ghouls, and Anti-social Persons

For killing a person believed to be *peth*—one who possessed the evil eye—Nuer say that compensation was six head of cattle only. For a *rodh*, a ghoul who performed unnatural rites with the bodies and graves of the dead, no compensation was paid at all if, in killing him, only sticks were used and he was not hit on the head.[1] There are also instances in tradition of witches, *gwan wal* (owners of medicines), *let* (werewolves) and the like, being done to death by general consent of the community and no compensation being demanded.

I know of no recorded instance where a Nuer court has had to deal with a situation of this sort, and it is a matter of tradition rather than the present administration of Nuer customary law. This is true also of the distinction between Nuer and Dinka, for no such

[1] The subject of witches and other anti-social persons is discussed more fully in Chapter V. See Howell and Lewis, 'Nuer Ghouls: a Form of Witchcraft', *S.N.R.*, 1947.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

differentiation is held valid nowadays. Yet the tradition is strong, and quoted consistently by nearly all Nuer tribes.

Uninitiated Boys

Among the Zeraf Nuer no distinction was made between those having manhood status and uninitiated boys. An uninitiated boy (*dhol*) was held fully responsible for his actions and his kinsmen were bound to assist him. Likewise the killing of an uninitiated boy demanded full rates of compensation. Boys who had not reached the status of warrior, however, were not expected to fight in a serious manner, and it was unlikely that an adult would kill a boy except by accident.

In Western Nuer some distinction seems to have been made even in the past. Writing in 1936, Captain H. A. Romilly records:

> Some doubt still exists about blood-money to be paid when 'ungarred' boys are killed.[1] The new decision in 1936 is: 'ungarred' boys killed by accident: 10 head of cattle; 'ungarred' boys killed on purpose: 20 head of cattle.[2]

It is difficult to say whether these fine distinctions are traditional or the result of past settlements in which the Government had a hand. It is, however, safe to say that theoretically full compensation would be demanded but would probably not be paid, as a compromise was more likely.

This matter was raised at the Nuer Chiefs' Council of 1945, but the only decision reached concerned the killing (usually accidental) of uninitiated boys by uninitiated boys (a fairly common occurrence in Nuerland). The indemnity for intentional killing was set at 20 head of cattle (i.e. half the full indemnity); for accidental killing, 10 head of cattle.

Compensation for the Death of a Woman

Nuer do not, of course, kill women in pursuance of a feud, though a feud might follow from the killing of a woman. Compensation is demanded in full; there is no distinction between the sexes. For an unmarried girl compensation should be paid to her family. For a legally married woman it should be paid to her husband. If he has paid only part of the bridewealth for his wife, compensation will still be paid to him, but some of the cattle will be demanded by the woman's family. He will be expected to hand over to them all cattle with the exception of a number directly proportionate to the number paid by him as bridewealth. The principle of compensation carried to its logical conclusion means that a man does not pay compensation

[1] 'Ungarred', 'uninitiated', from the Nuer *gar* to cut the forehead at initiation. Full compensation in that area was then 40 head of cattle.
[2] From unpublished administrative records.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

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at all if he kills his own wife—a rare occurrence—for he would have to pay it to himself.[1]

Legal Responsibility for Act of Homicide committed by a Woman

[672] A man is responsible for his wife's actions if she is legally married to him, even if only part of the bridewealth has gone to her family. If she kills someone, it is he and not her family who will pay compensation. A woman who is recognized as *keagh* (unmarried concubine) is in a different category, and a man is not responsible for her actions even while she is living as his concubine. Not he, but her family, will be called upon for compensation if she kills someone.[2]

5. PEACE CEREMONIES: COMPOSITION ON A TRIBAL SCALE

728 The laws of homicide described in the previous sections concern feuds (*ter*) which take place between the segments of a tribe. Tribal boundaries were not in the past so clearly defined as to preclude payment of compensation between sections of one tribe and sections of another, but a whole tribe would rarely unite to demand compensation for one of their number killed by a member of another tribe. When two tribes had been at war for a long time and there had been many casualties on both sides, both might decide to make peace; according to tradition there was a specific ceremony by which peaceful relations could be restored, and this again was performed by a Leopard-Skin Chief. After preliminary negotiations, usually initiated by some prominent leader in one tribe, representatives of both parties met at a chosen spot. A bull, always a hornless bull (*cot*), was sacrificed, and the Leopard-Skin Chief invoked the spear names and ancestral spirits of both sides, calling upon them to maintain peace between their peoples and to avoid disruption by endless warfare. He cried out, 'He who reopens this quarrel will cause his people to die and scatter like the hairs of the head of this bull', and then shaved the hairs of its head, scattering them in the wind.

We are here approaching an obviously difficult distinction between the feud and warfare on a wider scale. It seems to me unlikely that the ceremony was often performed in the past, but the details of procedure have been described to me on many occasions. It is not a ceremony normally performed between segments of a tribe, though there was one occasion quoted in Gaawar when Liab Liou, the leader

[1] I have known instances. In each case no compensation was awarded, though the culprit was expected to pay a cow or two as an act of appeasement to his wife's family and as part of the process of ritual expiation. The courts were always reluctant to impose a sentence of imprisonment. The culprit had already 'punished himself'.

[2] The question of the legality of the marriage is relevant here. See under 'Legality of Marriage', Chapter III, p. 124.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

(*ruic*) of the Bar primary segment, called upon the whole tribe, the Radh section included, to unite once more. This was after the separation of the two primary segments of the tribe and when there was a marked deterioration in tribal cohesion, but before the tribe was finally split by the raids of Arab slavers and the treacherous alliance of some of the Radh with the intruders.

6. CONCLUSIONS

Traditional Concepts and Action in the Past

We have seen that the laws relating to homicide among the Nuer are directed towards the maintenance of an equilibrium, and that in Nuer society this equilibrium is expressed in the balanced opposition of the segments of a tribe. Theoretically compensation should be the same whatever the circumstances of the killing and whatever the intention of the killer. These principles still largely apply, but in the past the main objective of restitution in the form of payment was achieved only with difficulty because, whatever the sanctions which exerted pressure on the aggrieved people to accept and whatever their actual feelings, convention demanded that they should accept only after a great display of hostility and reluctance. Moreover the degree of reluctance was genuinely affected by the actual circumstances of the incident. Some, but not all, Nuer tribes distinguished between intentional and unintentional homicide in assessing compensation. Compensation for intentional homicide was usually at least double that for accidental killing. The difference in the weapon used was also a qualification among some Nuer tribes, though it seems probable that they merely considered use of the fighting-spear an indication of intention. In contrast, reactions to homicide achieved by means which the Nuer consider unfair and therefore a greater wrong did not find expression in an increased rate of compensation. Unconfessed homicide was regarded by some Nuer tribes as a much more serious offence, and although this is a theoretical concept and without recorded examples, Nuer say that double the full rate of bloodwealth was necessary before settlement could be achieved. In this case, however, it was not so much an assessment of the quality of the homicidal act as a reaction to an offence committed by the killer afterwards, for he had, by concealing the deed, endangered the whole community including both factions. Nuer believe that the killer enters into a condition of ritual impurity which must be neutralized by the operations of the Leopard-Skin Chief if the community is not to share in that condition. An act of homicide therefore creates a state of grave danger. Actual danger springs from a state of feud, for there is always the likelihood of retaliation and further violence. Spiritual danger arises from the contamination of a man who has

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

●682 spilt the blood of a human being, and this may extend to his kin.[1] Between the group thus tainted and the kin of the dead man no social contact is possible until the pollution is removed by elaborate rites performed by the special functionary who exists for that purpose.

In connexion with the general theory of primitive law it is also worth noting that among the Nuer the composition of homicide was achieved by a payment which varied according to the status of the dead person, but this distinction, which is no longer valid, applied only to Dinka slaves of the first generation, and probably only to those captured in war and not fully adopted. Otherwise there was no differentiation according to class because no class distinction ever existed.[2] Moreover the age or sex of the deceased was not taken into consideration, the compensation for a woman or an uninitiated boy being the same as that for an adult male. It is true that low scales of compensation were demanded for the killing of certain categories of anti-social persons, witches and the like, and it might be argued that such persons were set in a lower status in society because of the evil reputation which attached to them, and in this also the germs of a concept of public law may be detected.

Unlike the scale of indemnities for lesser wrongs, compensation for homicide (*thung*) appears to have been maintained at a more constant level, with the provisos already mentioned. It was set as an ideal, though it is now difficult to say how often it was fully paid in the past, just because homicide and violent retaliation were the very first features of Nuer society to receive the attention of the Administration. The consistency with which these scales are quoted, however, seems to me partly due to its dependence on bridewealth, which is also expressed as an ideal. The main objective in the payment of the indemnity is to provide the deceased with a wife—a 'ghost-wife' who will bear children to his name and enable him to be the founder in posterity of a distinct collateral branch of his patrilineal descent group. It is therefore logical that the number of cattle paid as *thung* should be equal to those paid as bridewealth, though nowadays the difference between the latter ideal and the number actually paid is variable and often considerable. The distribution of bloodwealth among the kinsmen of the deceased follows closely the method of distribution of bridewealth, both maternal and paternal kinsmen having definite claims. It would, however, be a mistake to believe that bloodwealth should be exactly equal to bridewealth just because the former is intended

[1] There is also an idea that the spirit (*ciew*) of the dead man will haunt his slayer and bring about his destruction and disaster to his kinsmen.

[2] E.g., there is not a higher rate of compensation for a specialist functionary like the Leopard-Skin Chief as opposed to the ordinary people (*dwek*). It is worth noting here, however, that Nuer have in recent years often pressed for official recognition of a higher rate for Government chiefs and policemen when killed in the execution of their duty.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

mainly to provide the dead man with a wife. Other claims must be met first. Of the forty head of cattle some go to the kinsmen in the manner already described, others go to the Leopard-Skin Chief and his assistants, still others are sacrificed, so that only between twenty and thirty are left for the 'ghost-marriage'. These are normally kept until they increase sufficiently to reach the mark of current bride-wealth, and may then be supplemented by other cattle to which the dead man would have had a claim were he alive. Nevertheless Nuer feel that the two payments should be equal; a life for a life or a wife for a life, a logical equation which is entirely consistent with the principles of their customary law.

Observations on the Effects of Government Policy

Nuer are able to quote instances where compensation was paid and blood-feuds settled in the past before the advent of the present Government, but this does not mean that every case, or even the majority of cases, was settled. There is no doubt that blood-feuds, especially between tribal segments remotely related in terms of space and kinship, often continued for many generations, and the tradition of such feuds is still a source of political friction and a problem which faces the Administration today. Even when compensation has been paid and the ceremonies of composition performed the feud may break out again with renewed vigour. Generally speaking, the nearer the social relationship of the opposed groups, the greater the likelihood of permanent settlement. This observation applies theoretically, but only in the sense that in the initial stages feuds between less closely related groups were more likely to continue and no action be taken to bring about an agreement. In fact, they do not often continue nowadays because the Government intervenes and acts as a purely artificial and new medium through which hostile groups are brought together. Paradoxically enough, it is nowadays often the case that feuds between closely related groups are the most difficult to deal with. The reason is, I think, that feelings of hostility receive the permanent reminder of almost daily communication, while the primary sanction for composition, the threat of aggressive action by other groups, is much modified by the action of the Government in maintaining the peace.

The concept of punishment of the individual for offences which we, but not the Nuer, regard as criminal is another innovation which has had widespread repercussions. In cases of homicide capital punishment is sometimes inflicted and imprisonment or fine or both are always applied. Further, in cases of major conflict, fines are sometimes exacted on a collective basis, and in any case, even if the fine is inflicted on the individual culprit, it amounts to collective punishment because in Nuer society the principles governing mutual assistance in

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

681 177 the collection of bridewealth, bloodwealth or other kinship obligations automatically come into operation. The fear of punishment is therefore a collective deterrent, and this, with the general realization that payment of compensation will invariably be enforced, has undoubtedly reduced the incidence of homicide. It has also to some extent had the effect of strengthening public opinion opposed to the use of violence, and people are likely to go to greater lengths to restrain their fellows. Conversely, the certainty of punishment and of the enforced payment of compensation has lessened the fear of retaliation and has resulted in a corresponding reduction in the force of those sanctions which make for the fulfilment of social obligations.

Although the concept of punishment inflicted by the State is alien to the Nuer, its introduction has not been difficult, and the deterrent effects are appreciated by chiefs and court members. In general terms, however, a European system of criminal justice is not always understood. Fratricide, for example, is considered a great wrong, and 682 177 is one which is likely to shock Nuer deeply, but it does not demand any restitution or compensation. A man who kills his brother is injuring 593 himself, and although this may demand a readjustment in matters of inheritance, he cannot pay compensation to himself. Moreover his action runs counter to the very basis of Nuer social sentiment and conflicts with their ideas of kinship solidarity. It is an act almost on a par with suicide, which is fraught with spiritual dangers to the surviving kinsmen. Fratricide is the negation of all social principles. The killer will have to undergo a complex process of ritual purification to appease the wrath of the ancestral spirits and to avoid the misfortunes which may follow, but he will not pay compensation to himself or his brothers. Similarly when a man kills his legally married wife he is causing an injury to himself, for he has paid cattle for her which will now never be returned. Again he will have to undergo ritual purification, will have to give a few cattle or other gifts to his relatives-in-law, but unless he has not completed the bridewealth payments, he will not have to pay compensation in the normal sense. In such circumstances the Nuer find the greatest difficulty in understanding why the Government should seek to punish the culprit, and a Nuer court will usually resist an attempt to do so. If the case is taken out of their hands by the formation of a Major Court under the Presidency of a District Commissioner or Judge, there is little comment and they will accept the sentence, but it would be difficult to persuade a Nuer court to pass sentence itself.

671 178 Apart from the difficulties of understanding an alien system of justice, there are other factors which have had repercussions on the application of traditional Nuer law and in particular on the scales of compensation demanded for a wrong. It seems probable that with the absorption of Dinka elements and natural increase, human population

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

681 177 602

on the marriage of their female relatives. Previously, if relationship was distant, the chiefs would agree to no cattle passing and the 'breaking' of *mar*, but since the Fangak meeting chiefs are very reluctant to break *mar* as the more so-called relations there are available to collect blood-money, the better.[1]

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In connexion with the first repercussion mentioned by Captain Romilly, it would appear that the object of this legislation has been defeated. Not only is litigation increased in the courts, but the result has been an increase in the very kind of dispute—elopement, adultery, divorce, &c.—which is so often the cause of violence and bloodshed.

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The second result noted by Captain Romilly among the Eastern Jikany Nuer is not necessarily a social evil, as he seems to suggest, and indeed was one of the intentions of the action taken in raising the rates of compensation. We have seen that the social structure of the Nuer has been subjected to severe strains, and since social groups in the past were at least partially maintained as co-operative units by the retaliatory sanction and the need for mutual protection, a reduction in the incidence of violence and of blood-feuds has naturally tended to reduce group solidarity. The lessening of the retaliatory sanction has led to an excessive process of fission without the accompanying process of fusion. Unless this process is checked, or at any rate the speed of the process lessened, there is a tendency towards social decay and even chaos before a new form of social organization based on territorial factors and local government can be substituted. Captain Romilly of course refers to the consequent increase in litigation in the already overburdened courts because the retention of the widest range in *mar*, 'kinship', means a larger circle of people involved in relationships which demand mutual assistance and therefore an increased number of claims in a cattle exchange system.

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The Nuer courts which have been established by the Government are a form of machinery through which the social system is maintained. As I have explained previously, this has introduced a political authority upholding the customs of a social system, and custom therefore becomes law in a more precise definition of the term. Customary payments of compensation for wrongs (*duer*), normally only likely to be effective because of the fear of condemnation by a restricted community sentiment and a consequent loss of privilege and security, are now enforced as law. Cases are raised in the courts which would never have had the slightest chance of success in the past, and judgements are enforced because a too literal application of the traditional principles is made. A typical example of this is *nyindiet*. It seems likely that in the past *thung nyindiet* was only demanded in cases where the persons concerned were very closely related and then on a much reduced scale.

[1] Unpublished administrative records (Eastern Nuer District), 1945.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

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probably as a token payment. I have not been able to find evidence of *thung nyindiet* being paid in pre-government times. Yet, until it was abolished in 1945, the demand for *thung nyindiet* was frequent, and although the claims were sometimes carried to extremes of fantasy, they were also frequently enforced. For example, the family of an old headman, Loiny Kur, who must have been over seventy and scarcely able to walk for several years before he died, at once claimed compensation for his death, which, they claimed, was due to a blow on the head. Further investigation revealed that this blow, which caused him considerable discomfort at the time, but no more, was delivered about forty years before his death.

At the meeting of 1945 it was agreed to abolish claims for *thung nyindiet*, but over this a further difficulty arose, because there is no clear distinction between what would be called *thung ran*—compensation for direct killing—and *thung nyindiet*. A man may linger on in a disabled condition as a result of a blow for years before dying. In this case, if compensation for an injury has been paid, the cattle and their offspring will be assessed as part of the claim for bloodwealth, for this is one of the objects of compensation for hurt; but there are some injuries which do not in Nuer custom demand any compensation at all, notably blows on the head. The final ruling given by Chiefs at the 1945 meeting was as follows:

> *Nyindiet* is abolished. Only compensation for a man who dies as a direct result of a wound may be claimed and then full compensation will be paid. The test is this: if a man, as a result of a wound, is confined to his home and is unable to take part in the normal economic activities of the Nuer and finally dies after a period of years, then full compensation will be claimed. If he recovers, then if compensation for an injury is applicable according to Nuer laws it should be paid.[1]

This has subsequently led to much confusion, though the meeting of 1947 recorded that 'a series of test cases with the chiefs of Eastern Nuer straightened out their ideas.' This is an instance in Nuer law in which the circumstances of the case, as deduced from formally recorded evidence, must be the guiding factor and, as medical facilities increase, medical evidence also. In normal homicide cases brought before Nuer courts, the facts are not generally in dispute or concealed by the defendant party.

Recent legislation (in 1947) by the Nuer Chiefs' Council has also abolished the payment of *ghok pale loic*, mainly because in some parts of Nuerland there was an endless demand for such compensation as final payment for cases settled years ago. The idea exists in tradition, but was clearly of very rare application. As we have already seen, *thung yiiba* has also been abolished.

[1] Minutes of the Nuer Chiefs' Meeting, Fangak, 1945 (unpublished).

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

Modern Procedure

Cases of individual homicide are nowadays often tried by a Major Court[1] convened under the Code of Criminal Procedure of the country. This always applies in cases of murder, since murder is not triable by Chiefs' Courts.[2] The slayer is tried under the Penal Code for murder or, if the act is qualified by one of the five mitigating circumstances laid down, for culpable homicide not amounting to murder.[3] These circumstances can be reasonably adapted to Nuer standards, and the implications are well understood, since murder is *biem*, though even here 'grave and sudden provocation', one of the mitigating circumstances, might still apply in circumstances which the Nuer classify as *biem*. All other forms of homicide are simply *nak*. In the case of a murder for which sentence of death is passed and executed, compensation (*thung*) is naturally not paid, although the kinsmen of the murdered man often demand it. The State has assumed the role of the avenging kinsmen. Where the sentence is commuted to life imprisonment, the indemnity is usually paid.

The more straightforward forms of killing, which take place in collective hostilities, in brawls when the feelings of the participants are roused to extremes of passion, or in sudden unpremeditated quarrels, usually fall within the mitigating circumstances and, as culpable homicide not amounting to murder, may, with the permission of the District Commissioner, be tried by Chiefs' Courts.[4] There are naturally occasions when an act of homicide quickly leads to extensive hostilities and the chiefs appointed by the Government are either unwilling or afraid to intervene and restrain their fellows. In such circumstances the intervention of State police armed with rifles is sometimes necessary. Normally, especially in the more advanced parts of Nuerland—for the effectiveness of Nuer courts is not everywhere the same—the chiefs, their headmen, and tribal police quickly regain control. It is rare that a killer attempts to conceal his guilt, even if in the heat of the battle there are no witnesses, and he will usually give himself up to the nearest authority after performing the necessary purificatory ritual with a Leopard-Skin Chief. Other persons involved are put under arrest, and in most cases a number of cattle are seized, often from both parties and in excess of the number which will later be required as compensation. These are held as surety. A meeting of the court is quickly called, and the relative guilt of the parties is determined. Sentences of imprisonment, sometimes up to the maximum powers granted by law, are imposed on the killer or killers, and

[1] Consisting of a Magistrate of the First Class and two lesser Magistrates. Some Nuer chiefs are Magistrates of the Third Class for the purpose of sitting on Major Courts.

[2] Chiefs' Courts Ordinance.

[3] Sudan Penal Code, Section 249.

[4] Chiefs' Courts Ordinance, 1931.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

those who participated in or instigated the affair are punished. Fines are often imposed collectively on one or both sides and collected with the minimum of delay. A Leopard-Skin Chief is then appointed by the court to conduct the ceremonies of composition, and these are carried out strictly according to the procedure already described.

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It would of course be idle to pretend that all acts of homicide are dealt with so rapidly and efficiently, but in this sphere—in circumstances where public security is most obviously and severely threatened—Nuer courts are surprisingly effective. At any rate, during my time in Central Nuer District there were not many occasions when I had to intervene to restore order, though I was, of course, called in to confirm the judgement of the courts. Indeed, there was one occasion when I interfered too hastily by sending mounted police to round up the culprits and their cattle. As a result I was publicly and most soundly rebuked by the elder statesmen of the area, and was told that such matters should be left to the chiefs themselves. Many feuds were quickly settled during my absence when I was away from the district on leave, sometimes for several months at a time and there was no one to take my place.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

PART II HURT

1. INTRODUCTION

683 NUER demand compensation in cattle for injuries sustained in all forms of affray and individual fighting. Certain definite injuries are recognized in traditional law, and for these there are scales of compensation. There are also notable exceptions. For example, while elaborate scales of compensation in cattle exist for fracture of individual bones of the hand and for different fingers, there is no traditional compensation for a broken skull.[1]

The compensation is intended not only to appease the feelings of the injured party, but also to restore the balance between the conflicting groups. It seems that the fundamental principle involved is that an injury should be met by compensation in direct ratio to its severity, and the severity is assessed by the extent of a man's disability. Disability is judged by the extent to which a man is incapacitated from co-operating in the communal activities of defence and the maintenance of his immediate family and the whole group to which he belongs. It is a collective concern as well as one of individual redress. Fracture of the bones of the hand or the fingers may amount to a very serious injury if the man is unable to hold a spear in defence of his kin or to assist in the cultivation of his fields. In the case of a broken skull, the victim either dies—in which case a feud probably follows or bloodwealth must be paid in full—or he makes a complete recovery.

683 A second principle inherent in the payment of compensation for personal injury less than death is directly related to the law of homicide. It is that in payment of compensation in cattle the culprit insures himself, in the event of his victim dying at some later date, against the possibility of the deceased's kinsmen attributing death to that wound. This association of ideas has close connexion with the law of *nyindiet*. If cattle have been handed over as compensation for the injury at the time, it is unlikely that a claim for *thung nyindiet* could or would be pressed, for in theory the cattle have increased to a number equivalent to or more than the number normally demanded for *nyindiet*. In this respect it is also significant that most claims for *thung nyindiet* refer

[1] Although there is no traditional compensation, a Nuer court will nowadays sometimes award a cow or two to the injured party.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

683
682
683

back to wounds inflicted on the head of the deceased, particularly a broken skull.

As in the case of homicide, the existence of traditional scales of compensation for personal injuries does not indicate either a high exactitude of application or the inevitable and prompt settlement of disputes. In the past settlement depended largely on the relationship of the disputants. The principal inducement for payment was fear of retaliation, and in the case of a wound or a blow retaliation was likely to take a more personal and individual form than in the case of homicide. The injured party was on the look-out to avenge himself on the person of the offender. Generally speaking, too, the smaller and more integrated the community to which the disputants belonged, the more likely was it that pressure would be exerted to have the matter settled by payment of cattle and thus remove the danger of further friction within the group. The smaller the group, the greater was this pressure and the greater, too, the opportunity to exact personal revenge on the body of the culprit. Nowadays, injuries are assessed by the court and compensation is awarded with due regard for these traditional scales.

2. INJURIES RECOGNIZED IN NUER LAW

There are many specific injuries recognized in Nuer customary law as demanding compensation in cattle. Most of these injuries are fractures of bones, but it is usually on the subsequent effects of the injury —the stiffening of joints or paralysis causing permanent disablement— that the extent of the compensation is judged. Specific injuries recognized are given in the table (p. 70). Scales of compensation were extremely variable throughout Nuerland, but fairly consistent within one tribe. Elders can usually quote the rates current in the past. As in the case of most indemnities among the Nuer, I think that the rates were essentially idealized and therefore only a basis upon which a suitable compromise could be reached. This principle still operates in Nuer courts today, although there is an increasing tendency to quote past precedents established in case law. An attempt was made in 1945 to stabilize the scales, and the results are also recorded in the table, though it was appreciated that any rigid rule at this stage might be unwise. It is worth noting that theoretically total blindness is tantamount to death among the Nuer, and that loss of both eyes should demand full bloodwealth. At the Nuer Chiefs' meeting where these scales were discussed it was said that a man who loses his sight is 'like one who is dead', and the main object of the indemnity was to provide him with a wife, as in homicide. It was agreed, however, that in modern conditions ten head of cattle should be sufficient.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

woman is not legally married until this has been performed. In fact, there is no great difference in these opinions because in a normal marriage a woman's family will rarely allow her to take up residence with her husband until the *muot* has been performed.

Finally in this connexion, I must comment on a statement made by Professor Evans-Pritchard in his most recent book on the Nuer. He says:

> Most broken marriages occur during or shortly after the nuptial ceremonies. One cannot properly speak of divorce at this stage because in Nuer eyes marriage is incomplete till a child has been born. That till the birth of a child the wife is considered to belong to her own kin and not to her husband's kin is shown not only in her continuing to live with her parents but in other ways, most noticeably by the fact that the husband is held responsible for her death should she die in her first childbirth. He then has to pay compensation for homicide (*thung yiika*).[1]

The use here of the word 'incomplete' seems to me relative. If a 'complete' marriage is one which is legally indissoluble, then this condition is reached only at a much later stage when at least two, and probably three, children have been born. If it is 'complete' when the rights in the woman are legally transferred from her family to her husband, then this occurs much earlier in the proceedings, at some time between the *twoc* and *muot* ceremonies, and usually long before the birth of the first child. Nor does the wife necessarily remain with her family until the first child is born though it is usual for her to return to them to give birth to it, a custom which is common to nearly all Nilotic peoples. At this point and after it any outsider would have to pay *ruok ciek*, compensation for adultery with a married woman, which is payable to her husband, and not *ruok nyal*, compensation for intercourse with an unmarried girl, which is payable to her family.

It therefore seems to me more correct to say that marriage is legally valid after the *muot*, is not dissoluble after the birth of two or often three children, and that the likelihood of divorce diminishes with the birth of each child, but I should not like to say at what point the Nuer consider it 'complete'. Finally it is incorrect to say that a husband will have to pay bloodwealth, *thung yiika*, should his wife die in giving birth to her first child. *Thung yiika* is an indemnity demanded only when the child is the result of an illicit union and is not applicable to the husband within the institution of marriage. I have already explained that a man is not liable to pay bloodwealth should he accidentally or intentionally kill his wife. Such a liability ceases as soon as bridewealth cattle have been transferred and the *muot* ceremony performed. This also applies to *thung yiika*, and the only circumstances in which a woman's family might justifiably demand it from

[1] Evans-Pritchard, *Kinship and Marriage among the Nuer*, p. 93.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

her husband is before the *muot* and before he has met their claims for bridewealth, in which case strictly speaking the man is not her husband at all.

7. THE LEGITIMACY OF CHILDREN

Establishment of Legitimacy by Legal Marriage

Legal marriage is performed by the transfer of a number of cattle acceptable to the woman's family, and usually also by the performance of ceremonies and ritual observance. Children born of such unions are legally the children of the man who transferred the cattle or on whose behalf the cattle were transferred, and his rights in those children, and the rights which descend to his heirs, are valid and inalienable unless the cattle are returned. No conflict can theoretically arise, for a woman cannot have more than one legal husband at one time. Nor can any one of her children have more than one legal father or *pater*, though sometimes different children of the same mother may have different legal fathers. From the legal aspect, legitimacy brings to male children status and privilege as members of the legal father's lineage and the rights of inheritance from that father. They acquire rights in the cattle of the kinship group—rights which are determined by their position in the kinship structure; rights to cattle inherited and to cattle brought in by the marriages of females of that lineage. Female children provide a means by which cattle will be acquired by the lineage in the future on the normal principles of distribution of bridewealth (*ghok kwi gwande*), and they further stand as a legal link between the lineages of the father and the mother, for the mother's relatives may also claim cattle from their bridewealth (*ghok kwi mande*).

Thus the children of a simple legal marriage will belong to the legal husband by whomsoever begotten (for they may be begotten in adultery—which does not affect the legality of the marriage). In 'ghost-marriage' children are attached to the name of the man on whose behalf the marriage was performed, although in other respects their relationship to their physiological father (*genitor*) is normally the same as that found in simple legal marriage. The *genitor* is usually the principal heir to the *pater* by reason of the fact that he performed the ceremonies on the father's behalf, and also through normal rules of inheritance derived from their relative positions in the kinship structure of their lineage. It is probable that the children will be brought up in their *genitor's* household, and he is therefore also their foster-father. He may die, however, and his position will be assumed by his own heir.

Similarly, in leviratic union or 'widow-concubinage' the status of the children is determined from that of their legal father, although he is dead. Their physiological father will have authority over them and rights in them derived from his relationship to their

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

771
[754]

Few disputes derived from religious situations appear before the tribunals established by the Government today except occasional accusations of witchcraft, or violent action against persons believed to be practising witchcraft, and the claims of religious experts for fees from their clients. Before turning to these matters, however, I propose to consider two aspects of Nuer religious belief which are relevant to a study of their customary law. The first aspect is the part which is played by religion as a sanction for the fulfilment of obligations towards kinsmen and to Nuer as a whole, and as a deterrent against breaches of recognized behaviour. The second aspect concerns the part played by religious functionaries in connexion with legal processes. This aspect has been discussed at some length both in the introductory chapter and in the chapter on homicide, but mainly in connexion with the Leopard-Skin Chief. More must be said of other experts who have specific functions to perform.

Religious Sanctions and Legal Processes

Religious sanctions for the operation of accepted rules of conduct have already been mentioned in connexion with homicide and the spilling of blood. We have seen too that in certain offences concerning women there is a sense not only of a secular wrong but also of sin which must be expiated by ritual observance.

771
682

It is clear, however, that religious concepts do not provide a deterrent; a man is not deterred from killing another simply because he fears spiritual contamination or the pollution of those with whom he is associated. He might do so were there no definite means by which he can remove the danger, but the means exist. What he and his kinsmen fear is the voluntary, or more probably involuntary, breach of observance which will bring them disaster in the form of natural disease (*nueer*) or of sterility among themselves and their cattle. Religion among the Nuer is therefore not so much a deterrent to homicide as a sanction for carrying out accepted modes of behaviour after the event. It is further a sanction for the immediate confession of homicide, and this is why the Nuer rarely if ever attempt to conceal their guilt. The dangers of concealing an act of homicide are expressed in the concept of *loic*.[1] When a man fails to confess, there is a graver disruption of equilibrium; both his own kin and those of his victim run into the danger of involuntarily breaking the taboos on social contact, and consequently an incident of this sort may demand a higher rate of compensation if peace is to be restored.

There appears to be no formal reaction on the part of the community as a whole to an act of homicide, nor any general expression of reprobation. The killer is not thought of as an evil-doer because of his

[1] See p. 52.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

action in spilling the blood of a fellow man. There is no concept of Man as a member of Mankind, only as a member of a kinship group, and reprobation is expressed by them alone. Moreover God is not angered at the death of a human being, for God is not concerned with humans in this general sense of protection and responsibility; but the particular manifestations of God, represented in the kinship group by ancestral spirits and by the spirit of the dead man (*cien*), are indignant and cry out for vengeance.

There are therefore two reactions present: first, the reaction of the kinsmen of the slain, which is a reaction of indignation at personal loss, reduction in their numbers, and the damage to the continuity of their group; and this finds further expression in religious concepts associated with the kinship group. The second reaction is that of the killer's group, who demand that, in their own interests as well as his own, he shall perform those rites of expiation which will neutralize the effects of spiritual contamination emanating from the spirits associated with the dead man's kin. They may also express disapproval of his action, for he has brought upon them not only spiritual dangers but the threat of violence, and more probably the loss of the cattle which they will have to pay to restore the peace and regain their security.

Homicide has not yet become the concern of society as a whole and, except that other persons may find themselves involved in a feud which may spread along traditional lines of political cleavage, those outside the specific groups affected are not interested. The existence of a segmentary system and the absence of organized political authority covering all sections of Nuer society mean that there is no corporate body which will take action against the killer in the interests of society as a whole. The kinship group of the deceased combines against the killer and, by extension, according to the principles of collective responsibility, against the kinsmen of the killer. The latter are then compelled to adopt an attitude of defensive opposition, but within their own group they have also to demand that the killer shall perform those acts which will restore to him his ritual status.

From these observations it will be seen that—

(i) Homicide is considered a wrong, though not against society as a whole. The element of wrongness is relative to the relationship in the social structure of the parties involved. The killing of a stranger, especially of a foreigner, who does not come within the most expanded form of the social structure, is not really wrong (*duer*) at all. It is neither a crime nor a private delict, for there is no political sanction involved and no social relationship which might demand restitution. There is no motive for composition nor any mechanism for achieving it. It is, however, a situation which demands expiation in the form of ritual and sacrifice, which the killer performs with the assistance of the Leopard-Skin Chief. The ghost of the dead stranger,

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

[775]
682
783

The ghost of the dead stranger

no less than that of a fellow tribesman, may haunt the slayer, and the mere act of homicide creates a situation of spiritual danger.[1] This is a religious concept, but it does not provide an effective sanction against homicide because the consequences can be avoided.

(ii) The killing of a fellow tribesman, and to a much lesser extent a fellow Nuer of another tribe who is within the orbit of the killer's social sphere, is a wrong because it is an offence against the stability of society in its most extended form. But it is a private delict and not a crime, and demands only retaliation or restitution. The closer the relationship between the component tribal segments involved, the greater the sanction for restitution. It is also an act which brings spiritual contamination upon the killer and his kin, and expiation and ritual purification are necessary. Moreover the closer the relationship the more dangerous the consequences and the greater the need for purification, because the act of homicide amounts to a more grievous breach of kinship observance.

(iii) Finally in the narrowest definition of blood relationship, where kinship is a reality and not merely a fictional social form—that is, within the lineage or the extended family group—restitution becomes less and less necessary because the persons who assist in the payment of compensation are also the recipients. To put this in negative form, those who are in duty bound to take vengeance are also those upon whom vengeance should be wreaked. The situation then reached is so near to patricide or fratricide that the idea of vengeance or restitution must disappear. The situation is indeed something akin to suicide, which is the negation of the principle of kinship solidarity, and, as in suicide, the danger is not the threat of retaliation nor the need to pay cattle as compensation to some other group but spiritual damnation from within.[2] Hence the act does not constitute a private delict but is

[1] To the Nuer this idea applies to all mankind. The disgruntled spirit (*cien*) of the dead man will haunt his killer and bring him misfortune or even death. The act of spilling blood in itself creates a condition of impurity which afflicts the killer, amounting to an impairment of his ritual status, and therefore requires expiation. Hence the ceremony of *birr*, which includes not only sacrifice but the letting of the slayer's blood. The danger involved in the spilling of human blood is exemplified in the rules concerning the destruction of certain categories of anti-social persons, notably the *rodh* or ghoul, with the consent of the community. No blood must be spilt; the ghoul should be beaten to death with sticks. No such contamination arises from the spilling of animals' blood except that of an elephant. For this the ceremony of letting the blood of the killer must be performed or the ghost (again *cien*) of the animal will haunt him. It is especially interesting to note in this connexion that elephants are closely associated with mankind and are linked in mythology to the genealogies of certain lineages.

[2] This statement is, of course, qualified by the actual relationship of the persons concerned. Between brothers or half-brothers there could be no payment of compensation; between patrilineal cousins some form of compensation might be paid, but conditioned then and subsequently by other mutual obligations in connexion with cattle. The real test probably lies in the obligation to marry a wife to the name of a dead kinsman. If the killer were also the man, or one of the men, who normally might be expected to discharge this duty on behalf of the deceased, then no form of compensation would be necessary.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

a sin. No action against the offender is taken, but the spiritual dangers involved are correspondingly greater and more difficult to avoid. Fratricide and patricide and, to a lesser degree the killing of a close agnatic kinsman, is an offence against the objectives of kinship association and therefore a sin against the religious standards which express those objectives. Expiation in the form of prayer and sacrifice is essential; vengeance or restitution is not possible.

These observations apply specifically to homicide. There is no apparent belief that spiritual pollution will result from the infliction of bodily injuries less than death, nor from private delicts such as theft or the destruction of the property of persons who have no kinship or marital relationship with the offender. On the other hand, offences against accepted rules of marriage relationships and behaviour towards women within the lineage have a supernatural sanction, but again it will be seen that this is only a reflection of the idea of kinship. In such cases, however, there is no need for indemnification paid in cattle,[1] which is limited to the relations of opposed groups and the maintenance of the balance between them. In the first place a breach of the rules of exogamy is an offence against the structure of the kinship group, and one which involves the couple and their kinsmen in the gravest danger. Here there is no question of the maintenance of social equilibrium between two groups, only the spiritual safety of the single kinship group within itself and of the individuals of which it is composed, and there is consequently no question of material indemnification. The incestuous couple are themselves liable to the supernatural consequences which may be physically manifested in some form of disease (*nueer*), and their kinsmen may suffer subsequently, particularly from sterility, infant mortality, or a series of disasters which may also apply to their cattle. It is an act which requires expiation in the form of ritual and sacrifice, and the seriousness of the breach is gauged according to the nearness of the relationship of the couple. This dictates the value of the sacrifice and the complexity of the ritual of expiation. In some African tribes incest is treated as a crime, particularly if the offence is repeated, and penal action is taken against the culprits; but among the Nuer the ritual processes required are presumably considered sufficiently efficacious, and no repressive action is taken against the offenders. Theoretically those who consciously repeated the offence would earn the reprobation of their kinsmen, resulting in a loss of privilege which might reach the stage of expulsion, but I can quote no instance of this and have never found a Nuer who could.

There are other breaches of observance which result in similar forms of pollution. It is, for example, an offence to have sexual intercourse

[1] For minor infractions gifts—tobacco, food, &c.—may be offered to an offended kinsman.

8:Howell E, G-5 (1942-1944)1954
FJ22 Nuer FJ22

rights of others, may be punished by fine or imprisonment. Moreover certain legal wrongs, which in the past were never more than private delicts and were composed by the payment of compensation aimed at the restoration of this balance, are now becoming criminal offences in a more exact definition.

Under the influence of the Administration over the last twenty years or more the Nuer, as represented by their local authorities, are rapidly becoming conscious of the value of punishment as a deterrent. Court members will sometimes say that they are punishing a man both because his action has been detrimental to society as a whole and has created a disturbance, and also because such disruptive actions must be checked. Public opinion as a whole is not advancing very rapidly in this respect, and it is significant that there is still no social stigma attached to imprisonment. The average Nuer does not understand why imprisonment should be inflicted at all, especially if compensation is also paid to the injured party. This is apparent, but it is perhaps worth while to consider this attitude in connexion with certain offences. We have already noted that the Nuer cannot understand why a man should be punished for killing his wife.[1] The damage done has been done to himself, and though he must make peace with his ancestral spirits, for he has sinned against the whole concept of kinship and the continuity of the lineage, and must pacify his wife's relatives with gifts and acts of atonement, nothing more should be demanded of him. His act, like suicide and fratricide, is the negation of the basic principles which underlie kinship. He has used the cattle of his lineage to marry a wife, he has killed her, lost the cattle, and compromised his position in posterity. His act is reprehensible enough for these reasons, but why should he also receive punishment at the hands of the Government? Similarly, an act of adultery requires an indemnity to be paid to the man whose rights have been infringed. Once paid, what need is there for fine or imprisonment? This is a general attitude, even though punishment is so frequently applied that the Nuer have come to expect it and even demand its application to those who have transgressed against them.

When we come to analyse the position more closely, however, we find that there are few offences which can yet be classified as criminal. Homicide and bodily injury are the main exceptions to this observation. Murder is often punished by death and other forms of homicide are now settled by the payment of fifty head of cattle.[2] Forty of these go to the kinsmen of the deceased in the traditional manner, but ten go to the Government and must be called a fine. In addition, unless there are exceptional circumstances which mitigate the offence, the killer is sentenced by the court to imprisonment for a period varying from one to six years. Though in the early stages of administration

[1] See p. 62. [2] See pp. 63 et seq.

11:Evans-Pritchard E-5 (1931, 1936) 1945
FJ22 Nuer FJ22

brother, Gwanbul ♂—Jany ♂, who was killed in war. She has borne Loc ♂ a son, Col ♂. Jor ♂—Jany ♂ shares this byre. 592 588

Homestead No. XV. Nyading ♀—Thiep ♂. She died last year but as her hut is still standing she is included in this list. She was a wife of Jany married to him after his death by his son Gwanbul ♂ to whom she bore a son, Jor ♂, and three daughters. On the death of Gwanbul she cohabited with Mokwac of Homestead No. XVI but has not borne him children.

Homestead No. XVI. Mokwac ♂—Nen ♂. He shares this hut with Yuol ♀, widow of Diou ♂—Nhial ♂, an aristocrat of the Dieny section. She had three children by Diou, two being dead and one, Nyaroah ♀ being alive. By Mokwac she had a son, Thor ♂, who died, a daughter, Nyatiacni ♀, and a newly born daughter. Mokwac also cohabits with Nyadang ♀, of Homestead No. XXI. She has not borne him children but "cooks for him". Before her death Mokwac used to cohabit with Nyading of Homestead No. IV. He has no wife of his own.

Homestead No. XVII. Nyathagh ♀—Lagh ♂. A Dinka captive who was married to Dong ♂—Col ♂, a Jikul man. She bore him a daughter who died, and a son, Patai ♂. When her husband died he had no brother to cohabit with her and, being a Dinka captive, she had no kinsmen with whom she could reside, so she became concubine to Cel ♂—Thiep ♂, a leopard skin chief of the Keunyang section. She bore him Nyathat ♀, Nyaling ♀, Nyangiek ♀, Kur ♂, and Nyaduot ♀ (dead). On Cel's death she remained in his homestead, her present abode, and took a lover, Riek ♂—Juc ♂, of the Reng section of the Jikany tribe. She bore him no children and relations between them ceased. At present she has no lover. 592 727

Homestead No. XVIII. Nyadut ♀—Tweth ♂ (sister to Nhial ♂ of Homestead No. XXIII). She is a widow of Cuc ♂—Thol ♂ of the Riaagh clan. There were no children of this marriage and on her husband's death she lived in leviritic concubinage with Duob ♂—Cuc ♂, one of her husband's sons to whom she bore Leau ♂, Nyayoac ♀, Wany ♂, and another son. Duob ♂ was killed by Mokwac of Homestead No. XVI (compensation was paid but although Mokwac ♂ and Leau ♂—Doub ♂ live side by side they do not eat or drink together). For a while Nyadut ♀ then cohabited with Marial ♂—Kwong ♂ of the Gai section of the Jikany tribe. She bore him a child which died. Its death convinced them that they ought not to have had relations because Nyadut was *cek gwandong*, "grandfather's wife", to Marial. She now cohabits with Baranyai ♂ of Homestead No. III. She has borne him a daughter. Nyadut's byre has fallen down. People say that it will be rebuilt next year. 782

Homestead No. XIX. Yang ♂—Tien ♂ (brother of Juan of Homestead No. VII. when I asked why the brothers do not live together I was told *Juan mun me ca bec doreme, ee Yang ee bec doreme*, "Juan has a site which suits him down here, and Yang has a site which suits him up there".) Yang married Nyabeel ♀—Dec ♂ but she died, with her baby, in childbirth as a consequence of incest. She had incestuous relations both with a kinsman of her husband and with a kinsman of her own. (As she brought death on herself Yang ♂ did not have to compensate her kinsmen for her 592 684 835

death.)

12:Evans-Pritchard E-5 (1930-1931) 1933
FJ22 Nuer FJ22

619 ted from the Dinka who had brought him up they said "*achilo kang* (someone, the stranger) has gone. This phrase became corrupted into the word Jekaing, by which name the descendants of Kir are now known." This is an unlikely explanation, for one reason because the terminal phoneme in Jekany is *ny* and not *ng*, and for another reason, because *ji* is obviously a prefix meaning "people," as in JINACA, the people of Nac, or JIKUL, the people of Kul.[1] By analogy one may suppose that Jikany are the people of Kany, but it is very doubtful if Kany can be regarded as a proper name and equated with Kir, who was the founder of the dominant clan in this tribe and who, we might expect, would furnish the proper name after which the tribe would be called if they were called after a man. One may, nevertheless, I believe, ask a descendant of Kir "*Labi Kany?*" ("Are you a Kany?") in the same way as one may ask a descendant of Nac "*Labi Nac?*" ("Are you a Nac?"). Some people explain the term Jikany by saying that it is derived from a word meaning palm trees on account of a connection between palm trees and Kir who lived near them or who was found in a gourd on them or at their feet.

186 There can be no doubt that tribesmen have an emotional feeling about their country and hence towards its other occupants. This sentiment arises from common action in warfare, common name, common traditions, common regulation of public life, common territory, and above all from the fact that in each tribe one clan is predominant and forms the iron girders of kinship around which the political structure of the tribe is built up. Except in occasional periods of solidarity, however, when the tribe acts together as a military unit, the sentiments E-5 which bind its members together are extremely weak. Thus we find lengthy feuds going on between one section and another within the tribe itself.

619 (3) Nevertheless, machinery, even though it is cumbrous and not always very effective, exists by which feuds can be prevented or settled 621 sooner or later when they take place between segments of the same tribe, 622 whereas if a member of one tribe kills a member of another tribe there is no definite social machinery for controlling the situation which will arise as a result of the homicide. At the same time it is necessary to point out that the degree of control over retaliation for homicide varies

[1] In reading proofs I notice that I have written Jikany and Jekany equally but have not thought it worth while to alter. This is also the case with Jimac and Jemac.

12:Evans-Pritchard E-5 (1930-1931) 1933
FJ22 Nuer FJ22

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considerably within the tribe itself according to the size of the section concerned. The smaller the sections involved the greater the control, the larger the sections involved the smaller the control. Thus it is easier to settle a dispute between two villages of the Leng tertiary section of the Lou tribe than between one village of the Leng tertiary section and another village of the Nyarkwac tertiary section (*see* sketch map No. III). This is due to closer local cohesion in the first case than in the second and to closer relationship among the dominant clan element throughout the Leng section than between this element and the corresponding element in the Nyarkwac section. In the same way the Nuer say that there is more likelihood of settling a dispute between fighting factions of Gaatbal and Rumjok secondary tribal sections (*see* sketch map No. III) than between Gaatbal and Jemac secondary tribal sections, since Gaatbal and Rumjok both form part of the same primary tribal section of Gun while Jemac forms part of a different primary tribal section, the Mor. In this case also the dominant elements of Gaatbal and Rumjok sections belong to the same clan while the dominant element of Jemac section belongs to a different clan (*see* diagram No. V). Doubtless this is a statement of general tendency or principle and is, in actual practice, subject to many exceptions due to the special circumstances of the dispute and the genealogical relationship of the parties involved in it.

In kindly criticism[1] of the paper which I read before the British Association Mr. Coriat takes exception to my regarding settlement of disputes among tribesmen as a characteristic of tribal organisation. He points out that " in the past acts of homicide as between members of different Nuer tribes were dealt with by leopard skin chiefs in the same way as with members of tribal groups." I do not wish to pit my slight experience of the Nuer against the great knowledge and long experience of Mr. Coriat. Doubtless many homicide cases between members of different tribes were settled by leopard-skin chiefs. Among all peoples there is a wide divergence between theories of social life and actual social practice. I can only urge that I was constantly told as a legal rule or principle by the Nuer themselves, however little this may accord with actual practice, that among all Lou tribesmen there was *cut* (compensation for homicide) whereas there was no *cut* between Lou

[1] Privately circulated.

12:Evans-Pritchard E-5 (1930-1931) 1933
FJ22 Nuer FJ22

619 and Gaawär or between Lou and Gaajok. In Gaajok country I was also repeatedly informed that there was *cut* between all Gaajok tribesmen, 621 but no *cut* between them and Gaagwang or Gaajak tribesmen. It is ●682 true that tribes are not water-tight compartments. People moved all 629 over Nuerland with remarkable freedom and there are strong social bonds [587] uniting people with members of tribes other than their own, particularly [614] the bonds of marriage (there has always been interchange of daughters between Lou and Gaajok, for instance) and the bonds of clanship (the dominant elements in Gaajok and Gaajak tribes, for example, belong to the same clan since they are all descended from the same ancestor, Kir. Also lineages of the same clan are scattered far and wide among a dozen different tribes, but still recognise their kinship in spite of their territorial disintegration). Nevertheless, the declarations of Nuer on this point must have some significance, and I consider it well to record my own impressions from their verbal statements, together with Mr. Coriat's criticism. The point is important, but not overwhelmingly so. What is of greater significance is that each tribe has its own tribal 619 officials who regulate disputes among tribesmen in so far as their ritual 624 functions allow them to do so. The Lou leopard-skin chiefs regulate disputes among Lou tribesmen and Gaajok leopard-skin chiefs regulate disputes among Gaajok tribesmen. In virtue of his sacred character a leopard-skin chief (or land expert) can perform his ritual functions irrespective of tribal boundaries, but in the nature of things one does not summon a leopard-skin chief from Gaajok country to function in Lou country, but each district of Lou country has its regular experts who perform whatever services are required of them by fellow tribesmen of their section.

(4) Tribesmen unite for defensive and offensive warfare against 617 other tribes and segments of other nations. Messengers summoned 721 Lou tribesmen from all over the tribal area for a combined raid on the 648 Dinka and those who wished to take part in the raid answered the summons. In such expeditions there was a truce to disputes within the tribe itself and temporary tribal solidarity was attained. Mr. Coriat points out to me, with some justice, that "it is incorrect to state that the tribe is the largest political unit within the nation. Their history can show many instances where two or more tribes have combined in common offence and defence. As an example, Lou and Jekany against the Anuak,

12:Evans-Pritchard E-5 (1930-1931) 1933
FJ22 Nuer FJ22

614 Nile, from the Dinka, and settled there as lords of the country. I think
619 that it will probably be correct to say that every Nuer tribal area has its
554 *diel* (sing-*dil*) clan owners, aristocrats, dominant element, but that not
565 every clan has an area in which they are *diel*. There are possibly countries on the west bank of the Nile in which more than one clan rank as *diel*. Though it has not been recorded that such a system exists among the Dinka it is worth mentioning that the Nuer tell one that the Dinka also speak of *diel* in their various tribes, e.g., they talk of *dil thoini* and *dil luaica*, members of the clans which own Thoc and Luac tribal areas respectively.

The great point to remember about Nuer *diel* is that a man is a *dil* only in the country owned by his clan. Thus a member of the JINACA or GAATNACA is a *dil looka*, that is to say, that he is a *dil* in Lou country but nowhere else. If he moves to Gaajok country he ceases to be a *dil* and becomes instead a *rul* or stranger. He may still call himself a *gat dila looka*, a Lou aristocrat, but he does not count as a *dil*, aristocrat, in Jekany countries. In the same way a *dil Jekany* is a direct descendant in the male line from Kir, but when such a man crosses Lou country he becomes a *rul* or stranger. *Dil* therefore means a member of the clan which owns the country in which he lives. Hence members of a clan such as the JIMEM or JIKUL which have no tribal territory of which they can call themselves masters are nowhere *diel*. One may nevertheless speak of a *dil* JIMEM in the sense of a "real" or "pure" member of this clan in contrast to Dinka who have attached themselves to it.

614 I do not wish to be misunderstood when I speak of a tribal aristocracy
619 based on a clan predominance in a tribal area. The Nuer are intensely
554 democratic and the idea of one man lording it over the others is abhorrent
565 to them. However there is a prestige in being a *dil* of the country in which
[181] you live. Your clan are owners of the country, its village sites, its pastures, its fishing pools and wells, and other people live there by virtue of marriage or adoption into your lineage or because they are prepared to recognise your hereditary status and to join your local group on the understanding that they are strangers and on sufferance. It is the spear-name of your clan which is shouted when the tribe makes war. In some tribes
[632] the advantage of being an aristocrat are more concrete. Among t Eastern Jekany tribes the blood-money which is paid for a slain *dil* is apparently higher than for any other Nuer who may be killed in the same

12:Evans-Pritchard E-5 (1930-1931) 1933
FJ22 Nuer FJ22

countries. There is some doubt about the exact organisation of blood-cattle (*cut*) in old times. This uncertainty is partly accounted for by the undoubted elasticity of assessment, for we should make a mistake in supposing that the number of cattle paid over in compensation for homicide was invariably the same or that there was a rigid definition of social status. It is also partly accounted for by the fact that the *cut* was not identical in every Nuer tribe. The evidence seems to show that the greatest differentiation in assessment of blood-cattle between different classes in the community was to be found on the periphery of Nuer culture, among the Eastern Jekany, where the greatest absorption of foreigners has taken place. There I was given the following table of assessment for a late (probably post-European) period in their history :—

Gat dila Jikany (a member of the GAT GAN KIIR clan),
15 cows and 5 bullocks (20).

Gat Geaka (a member of any pure Nuer clan),
12 cows and 5 bullocks (17).

Jaang dila (a Dinka who has permanently settled in Nuer country and has attached himself to a Nuer social group),
11 cows and 5 bullocks (16).

Jaang (a Dinka, pure and simple, who has not yet become a permanent member of Nuer society),
8 cows and 2 bullocks (10).

In the old days it appears that 40 cattle was the regular payment for homicide in the case of a member of the dominant clan in Jikany countries, and for this pre-European period I was given the following table :—

GAT GAN KIIR ... ... 40 cattle.
Gat Geaka ... ... 40 cattle.
Jaang bathei (an adopted Dinka) 20 cattle.
Jaang (Dinka—unadopted) ... 6 cattle.

There is one main discrepancy between the first and second tables. In the second a pure Nuer of any clan is classed as the same for purposes of blood-cattle as a member of the GAT GAN KIIR clan, while in the first he is classed lower. I was never able to make up my mind which of these two estimates—I have been given others which differ slightly from both—was the correct one since, while members of the GAT GAN KIIR clan in Jikany country assured me that payment for killing a member of any other Nuer clan in their country was less than for killing a member of their

12:Evans-Pritchard E-5 (1930-1931) 1933
FJ22 Nuer FJ22

554 614 619 682 563

own clan, members of these other clans, who here count as *rul* or strangers, assured me that payments in both cases were equal. Assurances on both sides were clearly coloured by recent practice which has been based on government rulings at different times and by what regulations they hoped the Government would institute in the future. On the whole I consider that there was probably a differentiation between members of the dominant clan and members of other clans, but that the differentiation was not rigid and depended upon the special circumstances of each case, when length of residence in the country, marriage alliances with members of the dominant clan, and so on, were taken into consideration.

Quite definitely, however, there was a clear difference made between Nuer and Dinka in the assessment of blood-cattle compensation. This difference is found all over Nuer country, though there seems to have been difference of opinion in different parts of Nuerland about what constitutes a Dinka for purposes of homicide payments. Among the Lou the practice was to class members of the dominant clan, the JINACA, and members of the other Nuer clans together and make 40 cattle (32 cows and 8 bullocks) the regular payment for both. The son of a Dinka born in Lou country was considered to have become a Nuer (*caa Nath*) and his death was also compensated for by 40 cattle; but a captured Dinka or visiting Dinka or a Dinka who had taken up his abode in the country was reckoned as a *Jaang* and was compensated by only 6 cattle (4 cows and 2 bullocks). A Dinka even when given *buth* appears to have counted as *Jaang* and not as *Nath*, but his children were reckoned as Nuer for homicide purposes. Two informants told me that in Jagei country on the west bank of the Nile compensation for homicide was reckoned as follows :—

Gat dila (member of the dominant clan in the tribe),
34 cows and 6 bullocks (40).

Rul who has built his cattle-byre,
34 cows and 6 bullocks (40).

Rul and *Jaang* who have not built their cattle-byre,
6 cows and 4 bullocks (10).

The point of stressing the building of a cattle-byre was that a man who built one, whether a Nuer stranger or a Dinka, had obviously come to stay and became a permanent member of your social group and a member of your village. He became "your man" (*randu*), who owed you a kind of allegiance and who relied on your protection. Hence he is assessed on

12;Evans-Pritchard E-5 (1930-1931) 1933
FJ22 Nuer FJ22

the same footing as an ordinary resident born into the community. On the other hand I was told by some Eastern Jekany Nuer at Nasser that once a Dinka always a Dinka was the rule, and that the children and grandchildren of Dinkas never counted as equal to pure Nuer in blood-cattle assessment. I regard this statement, however, as being, in all probability, too rigidly formulated.

The second element in a Nuer village are the *rul*. A *rul* is a stranger, one who is not a member of the *diel*, one who has no place in the lineage of the dominant clan. Such people may be more numerous than the clan itself but they have not the same hereditary status in the tribe. Sometimes their lineages compose powerful tribal sections and in these sections they form a dominant lineage of their own. They are linked by sociological ties, often mythological in form, to the *diel* of the tribe. Thus the powerful sections of Reng and Kŏng of the Gaajak tribe are not *diel* but *rul*. The Reng section is united to the genealogy of Kir by the supposition that Reng the founder of some of its lineages (Col and Dhillrak) was equivalent to *gat mamen* (mother's sister's son) to Kir, his mother being a sister to the Ngok Dinka woman who nursed Kir and brought him up, while the founder of another lineage of this section, the Kŏng, was a man called Tik, who is described in the Kir myths as having given him supernatural assistance and saved his life from avengers. The Jemac and Jaajoah clans, which give their names to two secondary tribal sections[1] of the Lou tribe, are not of the dominant Lou clan, the Jinaca, but are nuclei of two large segments which, together with the Gaaliek section, comprise the Mor moiety. Here again there is a myth which unites them to the *diel* of the tribe. Denac (Nac) is said to have had four sons, Yin, Dak, Bal and Bany, by one wife, and Nyaang and two brothers, who are nameless, by another wife. Nyaang's two brothers were killed by a strange monster, which figures often in Nuer mythology, and is known as a *let*. When the sons of Denac went fishing the four full brothers went on their own and Nyaang by himself, for he would not accompany his brothers. Consequently when he caught a fish someone would come and steal it from him as he was all by himself. When he came home he would not sit on the ground facing his father as the other sons did but sat apart by himself with his back to his father and gazing in the opposite direction. When his father asked him what was the matter with him, he replied that he was thinking of his two

[1] In the Jemac section are included the important Jaagwerth lineage who are supposed to be distantly related to the Jemac.

584 make the best of it now. When the family of the girl are willing to talk the matter over, representatives of her lover's family discuss the marriage payment with them and try to agree upon a suitable price. Usually some arrangement is made, and the man makes as large an initial payment as he possibly can, following it up by other payments as he is able.

682 Everything may go all right until the baby is born. If by any chance the mother should die and her death be considered as caused by the birth of the child, the father of the child is held to have caused her death. And serious trouble is on again between the two families. If a member of her family does not kill her lover, he is fined for her death.

But if she lives and the baby lives, all is peaceful and they may live the proverbial happy life ever after.

595 Likewise, a man may have a wife whom he has married, and one or more whom he has not paid for but who are his wives in reality and the mothers of his children. He keeps a house for each, and they are often good friends with his real wife, although they are never called his wives.

Thus a man may have children by his several wives, and it is quite common to ask children of the same father if they have the same or different mothers. Or one may ask children of the same mother if they have the same father, especially if their mother is an inherited wife.

587 When a man dies his wife is inherited by his brothers or other male relatives. In case they do not want her, she may be returned to her father's village and the cattle paid back.

586 Divorce is not unknown in Nuerland, but it is usually caused by the lack of children. If a wife cannot bear a child, or fails to bring living children into the world, the

15: Butt E-4 (No date) 1952 FJ22 Nuer FJ22

tribes. The people in a district intermarry, conduct feuds, go raiding together, and so forth. 634

Nowhere in Nuerland do environmental conditions permit complete autonomy and exclusiveness of small village units. Pastoral pursuits and the needs determining transhumance cause concentrations of people and co-operation for half the year in dry-season camps, thus creating a wide inter-dependence which is lacking among the Anuak and many other tribal groups. 621

TRIBAL CHARACTERISTICS

Each tribe has a name, occupies a particular territory and owns and defends its own building sites, pastures and water supplies. Large rivers, or wide stretches of uninhabited country, generally divide adjacent sections of contiguous tribes, and these sections tend to move in different directions in the drought. Members of the same tribe have feelings of cohesion and fellowship with each other which do not extend to members of other tribes.(1) The age sets are organised tribally. 619

The tribe is the largest group of which the members habitually combine for raiding and for defensive measures. During the period of military unity, there is a truce to internal disputes. Inter-tribal fighting is fierce but is subject to certain conventions concerning women and children which do not extend to fighting between Nuer and Dinka or other neighbours. 619 721

Within a tribe compensation (*cut*) is paid for homicide. This is the invariable definition of tribal allegiance in every part of Nuerland.(2) Between tribesmen there is also *ruok* - compensation for torts other than homicide. If a man kills or injures a man of another tribe no breach of law is recognised; no obligation is felt to settle the dispute and there is no machinery to do so. 619 682 683

A tribe is a segmented structure in that it consists of a number of small divisions, each occupying a particular part of the tribal territory. There is opposition between these segments as well as a certain co-operation and cohesion. 619

Within each tribe there is a dominant clan and there is a close relationship between the lineage structure of this clan and the various territorial segments of the tribe. This is of the greatest importance for understanding Nuer structure and organisation.

Nuer tribes have no common organisation or central administration making for political unity in the generally accepted sense of the word. Yet adjacent tribes do form a political system and, in spite of inter-tribal opposition, will display a united opposition to different neighbouring groups.

(1) Evans-Pritchard, *The Nuer*, 1940, p.121.
(2) *Ibid.*

16: Evans-Pritchard E-5 (1931, 1936) 1956
FJ22 Nuer FJ22

always or entirely so. *Gwac* means a mistake, an unintentional error and generally one of no great consequence, one in which a serious breach of religious or moral precepts is not involved, such as an unintentional lapse in manners or a slip of the tongue. It implies that the action was incorrect but inadvertent; and the man asks to be excused. In a certain sense, however, in the sense that the act was not deliberate, a more serious fault may be regarded as a mistake, even though it is at the same time a fault, and the fact that it was not a deliberate fault is held to some extent to alter the circumstances. This is very evident in affairs in which damage and compensation are involved, as, for example, in homicide. When a man kills another, how the damage is treated, both with regard to manner and to the amount of compensation demanded, much depends on whether the slaying was premeditated or was the unfortunate outcome of a sudden quarrel or an accident. God also takes deliberation into account in breaches of moral law. Thus it is not thought that children will fall sick if they have incestuous relations in their play 'because the children are ignorant of having done wrong'. They know no better. Likewise, if two kinsmen have relations with the same girl, which Nuer regard as incest, without knowing that the other was making love to her, 'it is not incest because each was unaware that the other was making love to her'. Again, it is not thought that a man who commits incest with a kinswoman, not knowing her to be a kinswoman, will suffer any serious, or even any, consequences: 'This is not incest because he was unaware of the relationship between them.' If a man who respects hearts or lungs of animals eats them not knowing the nature of the meat he eats, 'this is an accident and his spirit (the spirit of hearts or lungs) knows that it was not done deliberately'. He may get a slight illness, but not a serious one. When I was living on the Sobat river news came to our village that some persons in an upstream village had found some meat and had cooked and eaten it, thinking that it was the flesh of some animal crocodiles had mutilated, and that they had later discovered it to be the flesh of a man whom crocodiles had killed and torn to pieces. I was told that these persons would at once have taken *wal nueera*, medicine to cleanse them from pollution, and that while the happening was very disgusting it was unlikely that it would cause death because the flesh was eaten in ignorance of its nature. Nuer say that God may overlook what